

Message Text

SECRET

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45

ACTION SS-25

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O R 181037Z FEB 75

FM AMEMBASSY SAIGON

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S E C R E T SAIGON 1804

EXDIS MILITARY COMMANDS HANDLE AS SPECAT EXCLUSIVE

C O R R E C T E D C O P Y - T E X T

E.O. 11652: GDS

TAGS: MASS VS CB

SUBJECT: MEKONG MINESWEEPERS

REFS: A) SAIGON 01764; B) JCS 171855Z FEB 75; C) JCS

152043Z FEB 75; D) CHMEDTC 171130Z FEB 75 (NOTAL)

1. IN REF A WE POINTED OUT THAT IT HAD BEEN THE INTENT OF CONGRESS TO MAINTAIN A CLEAR DISTINCTION BETWEEN US MILITARY SUPPORT FOR SOUTH VIET-NAM AND SUCH SUPPORT FOR CAMBODIA. THIS IS ALSO EVIDENT FROM THE LANGUAGE OF THE LAW ITSELF WHICH SPECIFICALLY PROHIBITS THE USE OF MASF/DAV FUNDS "IN ACTIONS DESIGNED TO PROVIDE MILITARY SUPPORT AND ASSISTANCE TO THE GOVERNMENT OF CAMBODIA..." (EMPHASIS ADDED).

2. WE HAVE LITTLE DOUBT THAT WHERE OSD ASSIGNS A HIGH PRIORITY TO ACCOMPLISH A SPECIFIC RESULT, THE INGENUITY OF THE LAWYERS WILL FIND A WAY AROUND THE LEGISLATION SO THAT IT WOULD INDEED BE "LEGALLY POSSIBLE" TO MAKE THE PROPOSED LOAN. WE HAVE FOUND THE SAME INGENUITY EXERCISED TO FIND LEGAL IMPEDIMENTS WHERE IT IS DESIRED NOT TO DO SOMETHING, E.G., THE LOAN OF THE ADDITIONAL LSTS WHICH WE CONTEND COULD HAVE BEEN PROVIDED

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QUITE LEGALLY BY INTERPRETING THE "ONE FOR ONE" REPLACEMENT

PROVISIONS OF THE PARIS AGREEMENTS TO PERMIT REPLACEMENT OF SEA LIFT CAPACITY ON A "TON FOR TON" BASIS RATHER THAN A "SHIP FOR SHIP" BASIS. WHETHER A LEGAL RATIONALE CAN BE PROVIDED FOR THE LOAN OF THESE LCMS (MONITORS) TO CAMBODIA DOES NOT ALTER THE FACT THAT MAKING THE LOAN WILL UNDOUBTEDLY BE CONSIDERED AS CIRCUMVENTING THE INTENT OF CONGRESS AND PROBABLY THE LAW. IN A SITUATION IN WHICH EVERY SINGLE VOTE COUNTS ON THE TOP PRIORITY QUESTION OF A SUFFICIENTLY HIGH LEVEL OF MILITARY ASSISTANCE FOR VIET-NAM, EVEN IF THE PROPOSAL WERE CLEARED BY THE APPROPRIATE COMMITTEE CHAIRMAN, THIS IS NOT ACCEPTABLE RISK FROM THE STANDPOINT OF OUR TOP PRIORITY IN INDOCHINA SINCE IT IS QUITE EVIDENT THIS CONGRESS DOES NOT ACCEPT "QUIDANCE" FROM ITS SENIORS AS READILY AS IN THE PAST.

3. FURTHERMORE, IT IS HIGHLY QUESTIONABLE THAT ANY BOATS "LOANED" WOULD EVER BE RETURNED. GIVEN THE CURRENT SITUATION ON THE LOWER MEKONG IN CAMBODIA IT IS MORE LIKELY THAT THE VESSELS WILL BE LOST. IN SUCH CASE, SINCE THE PROVISIONS MENTIONED IN PARA 2, REF C, HAS BEEN MADE "INOPERATIVE" BY REF B). COULD WE ASSUME THE GVN THAT IF THEY LOAN THE MONITORS AND THEY ARE LOST THEY WILL BE REPLACED WITHOUT CHARGE TO DAV.

4. I AM CERTAIN THAT PRESIDENT THIEU, AS HE HAS CONSISTENTLY DONE IN THE PAST, WILL DESIRE TO COOPERATE IN EVERY CONCEIVABLE WAY ON THE CURRENT CRISIS IN CAMBODIA. HOWEVER, OUR CONCERN IS, AS WE HAVE PREVIOUSLY STATED NOT WHAT MAY BE LEGAL BUT WHAT WILL BE THE COST TO VIET-NAM IN TERMS OF CONGRESSIONAL ATTITUDE NOT JUST BY THE APPROPRIATE COMMITTEE CHAIRMAN, BUT BY THE MEMBERSHIP AT LARGE SHOULD THE CHARGE BE MADE THAT THE PROPOSED ACTION VIOLATES BOTH CONGRESSIONAL INTENT AND THE WORDS OF THE STATUTE. I AM SEEING THE PRESIDENT WEDNESDAY MORNING AND SHOULD HE ASK WHETHER HIS DESIRE TO COOPERATE ON THE MONITOR LOAN WOULD BE COSTLY IN TERMS OF VOTES ON EITHER THE CURRENT SUPPLEMENTAL OR FUTURE MILITARY AID APPROPRIATIONS FOR VIET-NAM, I WOULD FEEL COMPELLED IN ALL HONESTY TO TELL HIM THAT I THOUGHT THE RISK WOULD PROBABLY BE VERY GREAT. I WOULD, THEREFORE, MUCH APPRECIATE CAREFUL CONSIDERATION TO THE POINTS MADE ABOVE AND BEING FURNISHED WITH THE REACTION THERETO BY OPENING OF BUSINESS SAIGON TIME, TOMORROW. IN THIS CONNECTION, IT APPEARS THAT

THE PROVISION OF DIESEL ENGINES REFERRED TO IN REF D MIGHT WELL PROVIDE A SOLUTION TO THE IMMEDIATE PROBLEM.

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5. CONTINGENCY PLANNING FOR THE SUPPLEMENTAL AIRLIFT FROM TAN SON NHUT TO PHNOM PENH IS UNDER WAY HERE. BEFORE MAKING A DECISION TO PROCEED WITH THE AIRLIFT WILL HAVE TO CONSULT THE GVN. HOWEVER, WE DO NOT ANTICIPATE DIFFICULTIES IN OBTAINING GVN APPROVAL AND COOPERATION.

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